

State of the Judiciary 2024

President Stevens, Speaker Tilton, other senators, representatives, and honored guests. Thank you for the invitation to speak with you today on behalf of the Alaska Court System. The state of the judiciary is, in a word, good. You may want me to leave it there, but I do intend to get further into the details in a few minutes.

Like some of my predecessors I began preparing for today by looking back at what earlier chief justices had to say on this occasion. The first address that comes up in the historical record is the one in 1972 by Chief Justice George Boney; you may recall that Chief Justice Winfree referred to it in his remarks a year or two ago. What prompted Chief Justice Boney's address was a concurrent resolution of the Alaska Legislature, signed in 1971 by Jay Hammond as President of the Senate and Gene Guess as Speaker of the House. The legislature said, and I quote, "[A]lthough the Judicial branch of government is an equal branch of our government, along with the Executive and Legislative branches, many legislators, as well as members of the public, feel that a communications gap exists concerning the operation of the Judiciary." The resolution cited the recommendation of Chief Justice Warren Burger of the U.S. Supreme Court that state governments help bridge that gap by having annual State of the Judiciary addresses just like at the federal level; and it concluded by saying that the Alaska Legislature would welcome the opportunity to be addressed by a member of the judicial branch in order to get (and again I quote) "an in-depth view of the successes, problems, and goals of the judiciary."

I want to thank you for continuing what is now a 52-year tradition of welcome from your branch to ours, and I hope that what I have to say today will give you some sense of the past year's successes, problems, and goals, as you have requested.

I. Introductions.

But before I go any further, I want to introduce my colleagues who are here today. **Susan Carney** has her home in Fairbanks. She was appointed to the Supreme Court in 2016 after a career with the Public Defender Agency and the Office of Public Advocacy. She chairs a number of committees and serves as a mentor in the very important Color of Justice program that encourages Alaskan kids to get involved in justice-related activities and careers. It was my pleasure recently to give her the 35-year pin recognizing her years of service to the citizens of this state.

My colleague **Dario Borghesan** has been on the court since 2020, coming to us from a leadership position in the Department of Law. Among his many other

responsibilities, he is co-chair of our Access to Justice Committee. He lives in Anchorage and he's the justice most likely to be weathered in on a moose hunt.

Also from Anchorage is **Jennifer Henderson**, who was appointed in 2021. She is the other co-chair of the Access to Justice Committee and chairs several other committees and working groups, including one that's focused on our criminal case backlog (and more on that later). She's one of two justices who have served as a trial judge, having spent time in both the district court and the superior court; and I can't tell you how valuable it is to have that perspective when it's literally your job to tell trial judges what they did wrong.

The latest addition to our court, also a former trial judge, is **Jude Pate**, who was appointed last year. He lived in Sitka for over 30 years, where he served as counsel for the Sitka Tribe and worked as an assistant public defender before becoming a superior court judge. Now that he's on the supreme court he has moved his chambers here to Juneau. Like my other colleagues he is a workhorse when it comes to committee assignments, including being in charge of our newer judge training.

A few other people I'm honored to introduce.

Our Administrative Director is **Stacey Marz**. She's been with the Court System for 20 years, first as director of our self-help and language access programs and since 2019 as administrative director. She's a very proactive leader, and it's largely due to her energy and creativity that Alaska is a national model for innovations in access to justice. She's supported by a very capable staff in the administrative office and in all our locations statewide.

Next I'll introduce a team that is familiar to most of you. I'm introducing them as a team not because they're fungible, but because that's the way we view them: The question is always, "What do Nancy and Doug think about this?" Justices come and go, but **Nancy Meade**, our General Counsel, and **Doug Wooliver**, our Deputy Administrative Director, have been the face of the court system during the legislative sessions here in Juneau *for decades*. We are so privileged to have them both come out of retirement to again help you understand our operations and our budgetary needs. Thank you, Nancy and Doug.

I also want to recognize the Executive Director of the Alaska Judicial Council, **Susanne DiPietro**, who has headed the council since 2014. Like Stacey Marz, Susanne is nationally recognized in the field of court administration; she's written widely on legal topics, she's a font of information on Alaska's courts and legal history, and she

has helped court systems in developing countries as far afield as Albania and Mongolia. She's a great administrator with a very capable staff.

Finally, I'm honored to have in the chamber today my wife, **Kay Gouwens**. Kay is one of those many spouses who said, sure, I'll go to Alaska with you for a year or two. I'm sure neither of us anticipated, when we first met in college in Michigan, that she would catch my eye again a full 50 years later across the expanse of this august chamber.

II. The Court System, Generally.

Before identifying some of the Court System's successes and challenges, I want to spend a few minutes setting the scene. We currently operate out of 38 locations across the state. It should be 40, but as you probably know the building that housed our court in Skagway burned down last February, and the space we were leasing in Hooper Bay became uninhabitable, and we haven't yet found suitable replacement space in either of those locations. But we hope to do so, because we recognize how important it is for Alaska's citizens to feel connected to their justice system. We want to be in those communities.

Statewide we have 64 trial judge positions – that's counting both superior court and district court — with four vacancies that the Alaska Judicial Council is in the process of filling. We've got 30 magistrate judges. These are judicial officers of more limited authority who are appointed by the presiding judge in each district; some of them serve communities that wouldn't otherwise have a court presence, like Hoonah and Seward and Aniak. Then there are the appellate courts: four judges on the criminal court of appeals and the five of us on the supreme court. In addition, we have over 750 other employees in clerical and support positions: these include customer service clerks, in-court clerks, judicial assistants, people who work on financial matters and HR and IT and facilities and security — all the people who are essential to a large organization like ours. When I introduced the justices and other members of our court system leadership, I hope you understood that we are just stand-ins for the hundreds of people across the state who work just as conscientiously to make a court system that's accessible and respectful and fair.

We've consistently taken up less than 2% of the State's operating budget; most of that funding is for personnel costs.

But despite our low profile in terms of the State budget, the courts are a significant presence in the lives of a lot of Alaskans. During FY23 nearly 92,000 cases were filed in the trial courts. And nearly 18,000 people appeared statewide for jury

duty, either trial juries or grand juries. So you can see that thousands of your constituents are involved in the judicial system not just as employees but also as litigants, as witnesses, as victims of crime, as jurors, or as people who need assistance with a name change or an adoption.

I'll give you a few more reference points regarding our caseload. About 30% of it is civil cases. A big part of this is family law — divorce, child custody, child support, and dividing up marital property. Then there are disputes about debts, housing, and small claims; there are probate matters, appointing guardians for people who need them or dealing with the estates of people who have died. There are property disputes: quiet title, easements, trespass, and zoning. There are tort and breach of contract cases. There are proceedings to determine whether someone should be committed for mental health treatment. And there are child in need of aid cases, where the Office of Children's Services has determined that a child is being neglected or abused and the State needs to step in and either rehabilitate the family relationship or seek to terminate the parents' rights.

Another 26% of the caseload is criminal. About 85% of these cases are misdemeanors — where the maximum possible penalty is a year in prison — and the rest are felonies. Another 40% of the caseload is minor offenses, meaning violations of traffic laws and fish and game regulations; and then there's a small percentage that are juvenile delinquency matters.

The cases that get the media attention — the ones that raise constitutional questions about voter initiatives, ballot access, subsistence or privacy rights, the occasional collisions between the executive and legislative branches — these are a very, very small part of what the judges see in their courtrooms and what we see on appeal.

III. Pandemic-Related Improvements and Challenges.

With this backdrop I want to talk about some of our **successes** over the past year. I'm defining "success" as an improvement in efficiency, in accessibility, and in Alaskans' perception that, whatever the result of a particular case, the court system handled it respectfully and fairly.

I sincerely hope this is the last State of the Judiciary address in which a chief justice utters the word "pandemic." But the pandemic did result in some changes in procedures that were positive enough that we've formalized them over the past year through a series of supreme court orders.

The first category is **remote proceedings**. You're all well aware of the challenges of court proceedings in Alaska because of the distances involved, the isolation of some of our communities, and the shortage of critical personnel in some positions. Looking especially at the agencies we see most often — the Department of Law, the Public Defender Agency, and the Office of Public Advocacy — they've struggled to keep lawyers in some court locations where their participation is essential. Their lawyers often have caseloads that touch many different communities separated by hundreds of miles, and of course they can't be in two courtrooms at once. Our courts have for a long time accommodated telephonic and other long-distance participation, and during the pandemic most of our judges and in-court clerks became adept at Zoom.

In November we implemented an order that attempts to both encourage more regular use of remote proceedings and to identify which types of court proceedings should be presumptively remote as opposed to in-person, with the judges retaining the discretion to vary from the formula if the circumstances require it. For example, most evidentiary proceedings in criminal cases are presumptively in-person, whereas a lot of hearings involving things like the status of discovery, scheduling, and settlements are presumptively remote. And the presiding judges in each of our four districts are issuing orders specific to their own district's practices — whether it's Kotzebue or Fairbanks or Juneau — so we can make sure that this presumptive format works from one end of Alaska to the other.

We've also worked with the Department of Corrections to ensure that all jail facilities have working video equipment, to make it as easy as possible for criminal defendants to attend their more routine pretrial hearings by video. This is of benefit to both the Department of Corrections and the Department of Public Safety, by cutting down the number of times prisoners need to be transported back and forth, with the attendant costs and inefficiencies and risks to public safety.

Another category of improvement I want to highlight involves **juries**. During the pandemic we developed some more efficient ways to use jurors; because of the health risks of bringing a lot of people together in a jury assembly room, our trial courts called fewer jurors at a time and ended up using them more efficiently. This meant that Alaskans spent less time waiting for something to happen, and fewer prospective jurors were sent home unused, both of which can be very frustrating experiences. We formalized these jury practices for the long term in an order we issued in August. The order requires that pretrial motions be resolved well ahead of trial, so fewer trials fold at the last minute, after jurors are assembled and ready to go; it requires that jurors be called in in smaller groups, so they spend less time waiting to be brought into the courtroom for jury selection; and we're trying to ensure that a lot of the other

preliminaries like hardship excusals and challenges for cause can be decided based on questionnaires that are emailed ahead of time.

Not that many cases go to trial in front of a jury; you've heard these numbers before. It's consistently less than 2% of all criminal cases that are decided by a jury, the rest being either dismissed by the prosecution or resolved by agreement — but either of those resolutions usually comes about *because of* the imminence of a scheduled jury trial. When cases do go to trial, the jury is a big-ticket item. Jury expenses, including juror pay and travel, lodging, and meals, totaled a little under \$2 million in FY23. Jury trials in Bethel and Dillingham, where many potential jurors have to travel by air from the surrounding villages, accounted for nearly \$375,000 of the total.

To help address this issue, in November we authorized a pilot project in Bethel, allowing jury selection by videoconference in civil cases and criminal misdemeanor cases — meaning that the jury is actually selected without the expense and inconvenience of bringing a pool of potential jurors in to the court location just to see whether they will actually be among the chosen few who will serve. The jury is selected and then flown to Bethel for the trial. This should result not just in cost savings but also in a better juror experience.

Before I leave the subject of pandemic-related changes, I need to highlight one of our most daunting challenges, and that is our **backlog of criminal cases**. There were many months during the pandemic when jury trials were not happening, at first for the simple reason that it wasn't safe to convene large groups of people in a confined space and later because of agency attorney shortages that meant that there just weren't enough experienced attorneys. Of course, as I just noted, jury trials aren't how most criminal cases are resolved; it's the *threat* of a jury trial that makes things happen. When the prosecutors and defense attorneys lacked this incentive to seriously evaluate their cases and decide which ones should be settled or dismissed, things slowed way down. We recognize the impact this has on not just the criminal defendants but also the victims, family members, potential witnesses, and the public at large, and we want to make sure that the court system is never the cause of delay.

We are trying to address the backlog in a variety of ways. One way is to make better use of trailing calendars, as they've done in the Fourth Judicial District. This means that if one case set for trial folds at the last minute there's another one in the queue ready to go. Other approaches include limiting the number of allowable continuances and ensuring that every pretrial hearing is actually meaningful and not just an occasion to kick the can down the road; these approaches are part of orders just issued by the presiding judge in the Third Judicial District. The working group I mentioned earlier, headed by Justice Henderson, is energized to tackle this problem

aggressively. The courts stand ready to hold jury trials; we will find courtrooms, if necessary we will bring back retired judges to preside over trials whenever the other institutional players are ready to go. And I'm happy to say that the executive agency heads — the people who lead the Department of Law, the Public Defender Agency, and OPA — are eager to do their part. We are going to work through this so that next year we can present it to you again as one of our successes.

IV. Other Court System Successes.

Now I want to highlight some positive changes that aren't necessarily related to our pandemic practices; first a few things having to do with our relations with **tribal members and tribal governments**. In June we issued an order creating a new rule for Child in Need of Aid cases. This rule creates a uniform process for tribes' intervention in cases involving children who are subject to the Indian Child Welfare Act. As you probably know, federal law gives a child's tribe the right to participate in these proceedings, but we haven't had a uniform way of recognizing that right. This new rule, CINA Rule 26, makes clear that all the tribe needs to do is notify the court of its intent to participate; no motion or other formality is required.

We're also urging courts to make better use of Criminal Rule 11(i). This is a rule that allows the judge in a criminal case to refer the matter to a restorative justice program as long as the victim, the defendant, and the prosecutor agree. Restorative justice may include circle sentencing or another culturally-based process that incorporates input not just from the victim but also from the community at large; and this may result in a recommendation to the court as to what the sentence should be. It's another way to help Alaskans see the court system as a part of the community, reflecting its values, and not apart from it.

There are another half-dozen Court System projects I want to touch on just briefly:

The first is the **early resolution program**. Our court has long been a national leader in access to justice projects, in part because making the justice system accessible across Alaska has required a lot of creative thinking. We've had a successful early resolution program for domestic relations cases since 2009. 80% of the cases that enter the program are resolved early in the process using mediators, volunteer attorneys, and settlement judges, usually in the course of just one hearing. This has been going on in Anchorage, Juneau, Palmer, and Kenai, drawing in cases from other regions, and in January it started up in Fairbanks as well. The program has allowed thousands of Alaskans with issues related to divorce, child custody, and marital property to avoid most of the expenses and stresses of the adversarial system.

Second, in FY23 we received a grant to create a **statewide eviction diversion pilot program**. This includes an option to resolve housing disputes without any sort of court filing — just negotiation with a neutral mediator — and this has also seen a lot of success.

Third, we've been working with a vendor to develop a more general **online dispute resolution platform** by which parties will be able to negotiate, mediate, or in some types of cases even have an entire trial online --- again without the need to file a complaint or physically appear in court. The platform can be accessed outside of normal court hours. It is now limited to debt-related cases, but we believe it can prove useful for some housing issues, post-judgment parenting plans, and maybe traffic cases, again with the goal of helping people resolve their legal issues with as few logistical challenges as possible.

Fourth, we have an ongoing **guardianship improvement project** that makes use of federal grant money to improve our handling of guardianship cases, which are one of the fastest growing categories in our system. We've hired specialist monitors to help family guardians with the regular reporting that's required by statute; supporting family guardians in this way makes it less likely that the public guardian will need to step in. Our operating budget request includes funding to continue and expand this work.

Fifth, with the addition of Anchorage and Palmer in just the past month, all of Alaska's courts (with the exception of one that's in the process of upgrading its internet service) now have **electronic filing** in criminal cases and minor offense cases; we hope e-filing will encompass all case types and courts by the end of 2026.

And sixth, we're beginning to implement a **digital evidence management platform**. Very often these days parties come to court with their evidence on flash drives or their laptops or iPhones, and the judge has to be able to see this evidence and incorporate it into the record without putting our own court system computers at risk of viruses or malware. It can be a particular challenge in hybrid proceedings, where some parties are in the courtroom and others are attending remotely. This platform allows anyone with a screen to have the same view of the evidence at the same time; it's cloud-based, meaning that it doesn't touch the court system's computers; and it has neat features for editing and marking documents. It will be rolled out for the first time in a hearing this month in Bethel, and our plan is to extend it statewide.

There's one other project I want to mention that affects the public face of our court system: and that is an important updating of the **Alaska Code of Judicial Ethics** by a committee led by retired Justice Winfree and retired Court of Appeals Judge David Mannheimer. Judicial ethics have been in the national news this past year. There is a

public perception, rightly or wrongly, that some courts, and some judicial officers, don't consider themselves subject to ethical rules regarding conflicts of interest and financial disclosures. That perception could color the way citizens look at all judges and all courts. I can assure you that the Alaska Code of Judicial Ethics binds every judicial officer, top to bottom, and we take it very seriously, as does the Judicial Conduct Commission that has the task of enforcing it. And judges report their finances to the Alaska Public Offices Commission just like you do.

All of Alaska's judges receive a weekly report from the National Center for Judicial Ethics, which is a clearing house for this type of information. The report describes the ethics complaints that have been brought against judges across the nation, both federal and state. Every week there's another dozen or more, and some of them — describing the sorts of trouble judges get into — can be pretty appalling. But one thing you almost never see on that list is Alaska; this is a credit to our judicial selection process, our judicial education, and ultimately the quality of the people who serve as judges in our state.

V. Budget Issues.

I want to turn now to our budget request and highlight just a few aspects of it. First, you can see by all the projects I've mentioned that Alaska's courts are very dependent on technology to serve our state's very diverse legal needs. We're requesting money this year for an **emergency technology fund** that would roll over from one year to the next. The money would be available to address situations like a cyber-attack, when — as we know from recent experience — we would need to act on short notice to hire forensic consultants, deploy expensive software to identify the extent of the intrusion, and revamp our system's security. Another state's court system had a major attack this past year and was offline for months; a county government in Georgia, including its court system, was hit last week; and Pennsylvania's courts were hit on Monday. Federal experts warn us that courts are popular targets and have to be especially vigilant. Many state courts have created this kind of emergency technology fund, and we hope that you'll see its value as well.

Despite all this technology we still need actual brick-and-mortar **courthouses** — buildings that are both functional and secure. Alaska's courthouses run the gamut: some are in buildings owned by the Court System or executive agencies, others are leased from tribes, local governments, or private landlords. Many of our buildings weren't built as courthouses and required a lot of renovation before they were useable. And then of course there's the weather — causing roof leaks, frozen pipes, shifting floors, and decaying asphalt in the parking lots. We have a lot of **deferred maintenance** issues that we do our best to chip away at. We took the step in 2022 and

2023 of having a conditions assessment done on the buildings we own; this resulted in a timeline for replacing necessary systems like boilers, air exchanges, elevators, and roofs. We are very grateful for the support we've received from you for these projects in the past; for us to keep the doors open statewide we need that support again.

You're all familiar with the population trends in Alaska, including the outmigration which should mean a decreasing caseload for the courts. But there's one place in the state where there's a growing population and a corresponding increase in the caseload, and that's the Mat-Su Valley. The Palmer judges already have the highest per-judge caseload in the state. Last year you gave us the funding for an additional magistrate judge position, which we've filled, and that helped a lot, particularly with probate cases. But space is still an issue, and demographic trends being what they are, the **Palmer courthouse** simply isn't big enough to keep up. This past year we worked with designers on a plan to add three more courtrooms and some flexible space to accommodate hearings and work spaces, with the option to build upward in the future, when it becomes necessary. Our capital budget request this year includes funding for this Palmer addition; it's badly needed, and we hope you'll consider it seriously.

And just a word about Bethel. We're grateful for last year's funding for the design of a new and badly needed **Bethel Justice Center**, which we expect will involve other justice agency partners and tribal organizations. We haven't included any additional request related to this project in this year's operating budget because we're still in the design phase, but you will be hearing more about it in the future. We have high hopes for a new building that will be functional and welcoming for people from all over the region.

VI. Conclusion.

Speaking of Bethel, I want to close with a few words about a trip I took just two weeks ago with the other members of the Alaska Judicial Council. As you know, the council has the constitutional duty to assess the candidates for judicial positions across the state and send their nominations to the governor. There are six people on the Council besides myself, citizens from Juneau, Kenai, Anchorage, Wasilla, and Fairbanks, all of whom take the work very seriously. We spent a week in January talking to candidates for superior court positions first in Bethel, then in Sitka, then here in Juneau.

You can't go through that process without realizing several things about our state. The first is that people really love where they live, wherever that may be. You'll get the same message in Bethel that you get in Sitka and in Juneau: "This is the best community there is," and the reason maybe has something to do with the natural beauty

or the opportunities for employment and recreation and hunting and fishing, but most likely it's because the people are the best; they're friendly, they're involved in their community, and they watch out for each other.

The second thing you notice on these trips is that there is a wealth of talented and accomplished people throughout Alaska who could be doing almost anything but are excited about committing their professional lives to public service. This is true not just of the judicial candidates, but also of the other people who work in the courts and are the face of the Alaska Court System in their communities. I have to take this opportunity to thank all of them for their good work. And on their behalf, I thank you again for the opportunity to talk to you about our successes, our problems, and our goals, and I wish you much patience and wisdom in the challenging weeks you have ahead.